IN THE HIGH COURT OF JUDICATURE OF ANDHRA PRADESH, AT HYDERABAD

Present:
HON'BLE MR. JUSTICE S.ANANDA REDDY

Friday, the 15th day of September, 2006

W.P.No. 11338 of 1995

Between:
M/s.kKedia Solvent Oil Industries Ltd.
Rep.by its Managing Director
Mr.Matadeen Gupta

…Petitioner

And

A.P.State Electricity Board,
Rep.by its Secretary, Vidyut Soudha,
Somajiguda, Hyderabad and 6 others

… Respondents

The Court delivered the following -

HON'BLE SRI JUSTICE S.ANANDA REDDY

Writ Petition No.11338 of 1995

ORDER:

This writ petition is filed by the filed by the petitioner praying for writ of certiorari or any other appropriate writ calling for the records relating to the proceedings of the 2nd respondent dated 19.07.1994 modifying the order of the 3rd respondent dated 31.08.1984 and quash the same, and consequently sought for refund of the amount already paid with interest at the rate of 18% per annum.

2. It is stated that the petitioner is a public limited Company incorporated under the provisions of the Companies Act, 1956. The petitioner is having a solvent extraction plant and a hydrogenation plant at Mir-Alam Tank Road, Hyderabad. The petitioner is availing high tension power supply from the 1st respondent-Electricity Board for its industrial unit since 01.12.1973. Originally, the petitioner was availing the power for a contracted maximum demand of 200 KVA with connected load of 250 HP plus 6 KVA plus 12 KW vide Agreement dated 01.12.1973. The petitioner's industrial unit was expanded from time to time. Accordingly, the petitioner was applying and obtaining the additional loads as and when required, after

complying with various formalities, like approval from the Chief Electrical Inspector to Government (for short 'CEIG'), etc., and the additional loads were being formally released by the Board officials. The agreements were being revised from time to time, as detailed below:

Sl.No.	Date of Agreement	CMD	Connected Load
1.	01.02.1973	200 KVA	250HP + 6KVA + 2 KW
2.	June, 1978	3200 KVA	250HP + 6KVA + 289 KW
3.	18.09.1978	400 KVA	250HP + 6KVA + 429 KW
4.	05.12.1978	500 KVA	370HP + 6KVA + 429 KW
5.	13.12.1979	600 KVA	520HP + 6KVA + 429 KW

3. It is stated that in January 1980, the petitioner proposed for further expansion of the solvent extraction plant and also hydrogenation plant by adding a second rectifier transformer unit with 60 cells to the hydrogenation plant. It is submitted that the rectifier unit will only convert the alternating current into direct current and will not involve consumption of any electrical energy by itself. The petitioner requested the Divisional Electrical Engineer (Operation), Zone-III, vide letter No.KSOI/Electronic./79-80, dated 11.01.1980 for sanction and release of additional load of 300 KVA.

As per the procedure prescribed under the Indian Electricity Rules, new electrical installations require the inspection and approval of the CEIG. Accordingly, the petitioner submitted drawings indicating the erection of the new rectifier unit to the CEIG. The

drawings were approved by the CEIG on 21.03.1980, and thereafter steps were taken to acquire the necessary equipment. The Divisional Engineer vide his letter dated 15.07.1980 sanctioned the additional load. However, due to financial constraints and adverse market conditions, though the drawings were approved and additional load was sanctioned, the petitioner did not proceed with the scheme of expansion of both the plants. It is further stated that after two years, the petitioner decided to expand the solvent Extraction Plant and install the additional equipment of a rectifier unit with 60 cells for hydrogenation plant. The installation/erection of this additional equipment is a job work, which requires expertise. Therefore, the petitioner engaged M/s. Mascot Processes and Consultants (P) Ltd., Bombay for expansion of the solvent Extraction Plant and erection of new rectifier unit. Therefore, the solvent extraction plant was closed down on 9.9.1982 for expansion work and was handed over to the consultants on 12.9.1982 for carrying out the expansion work. The new rectifier unit with 60 cells of 300 KVA load was also handed over to them on 15.10.1982 for erection in the hydrogenation plant. The works were going on. The hydrogenation plant with one rectifier unit and 60 cells alone was under working condition.

At that stage on 12.10.1982, the Assistant Divisional Engineer, the 6th respondent herein inspected the factory premises. The Solvent Extraction Plant was under closure for expansion. There was nothing to be discovered. On the date of inspection, the inspecting officer found that the hydrogenation plant with only one unit was in working condition and arrangements are being made for

expansion and erection/ installation of additional equipment. The second rectifier unit and other ancillary equipment were lying in the premises. However, the inspecting officer counted this un-connected equipment as part of the connected load and concluded that the petitioner had unauthorisedly exceeded the contracted load. At that time, no responsible officer of the petitioner Company was available in the factory premises. One Mr. Naresh Gupta, who was a student and who does not know anything about the affairs of the petitioner was present in the premises. The inspecting officer purported to prepare some sort of note and obtained the signature of Mr.Naresh Gupta. It is stated that the erection of the second rectifier unit was completed during the first half of December 1982. The expansion work of Solvent Extraction Plant was completed by 31.12.1982. But the work on hydrogenation plant was incomplete, as the cells were not erected. On 2.1.1983, the Consultants engaged by the petitioner have completed and commissioned the solvent extraction plant and that they would depute their personnel for commissioning the rectifier unit after the cells were erected. Production was resumed in January 1983 without even connecting the second rectifier unit.

On 12.4.1983, nearly six months after the inspection, the Assistant Divisional Engineer issued an initial assessment notice alleging that the petitioner had unauthorisedly exceeded the contracted connected load and thus committed malpractice. In the said notice, the authority provisionally estimated the value of the energy misused at Rs.1,25,065-90 paise and directed the petitioner

to pay Rs.62,532-45 paise to avoid disconnection, pending enquiry by the Superintending Engineer (Operation), City Circle, Hyderabad. No details were indicated as to how this load was worked out or how the demand was computed. On the representation of the petitioner, the 4th respondent permitted the petitioner to pay the amount demanded in instalments. But, however, on 24.5.1983 the said initial demand was revised stating that there was an arithmetic error in the earlier notice, and the provisional assessment was Rs.4,74,564-30 paise, and directed to pay half of the said amount. The said amount, according to the petitioner, was paid in instalments. Further, on 12.12.1983, a formal agreement for additional load was entered into between the parties, though the same was sanctioned as long back as on 15.7.1980. Thereafter, on 19.1.1984, the 4th respondent issued a show cause notice estimating the value of the energy misused at Rs.2,83,867-30 paise and invited objections. The petitioner submitted objections to the proposed assessment, reiterating the stand that there was no violation by exceeding the connected load beyond the contracted load. The petitioner also claims that the benefit of B.P.Ms.No.830, dated 25.8.1984, which provides for regularisation of the cases, where the connected load exceeds the contracted load in H.T. services. The 3rd respondent after rejecting the objections of the petitioner, made the assessment on 31.8.1984 confirming the value of the energy for the alleged malpractice as proposed in the show cause notice. Aggrieved by that, the petitioner filed an appeal before the Chief Engineer, Western Zone raising various grounds. The Chief Engineer, however, while

negativing the contentions raised by the petitioner, passed orders on 30.1.1985 estimating the alleged loss sustained by the Board at Rs.2,51,384/- without disclosing any basis or details there for. The said order was questioned before this Court by W.P.No.12763 of 1986, which was allowed remanding the matter to the appellate authority for fresh disposal on merits. After that, it is stated that the matter was heard on various occasions by different officials, and finally the impugned order was passed on 19.7.1994 i.e., after five years of the remand, confirming the same demand as was made earlier. Hence, the present writ petition.

4. A counter is filed on behalf of the respondents disputing and denying the contentions raised by the petitioner. It is admitted that the Assistant Divisional Engineer, Vijayawada along with his team of engineers inspected the unit of the petitioner on 12.10.1982 and found that the factory was working. With reference to the claim of the petitioner that the factory was closed on 9.9.1982 towards further expansion of the industry, it is stated that the entire factory has been dichotomized into two sections, namely Solvent Extraction Plant and hydrogenation plant and the consumer states that his expansion programme of the factory involves expansion of Solvent Extraction Plant and hydrogenation plant simultaneously. As both the units were under expansion, there was no production in the factory and power consumption recorded during the said period was only exclusively for lighting load. But, according to the respondents, the entire factory lighting load as reckoned during the inspection on 12.10.1982 was found as 21.17 KW. However, the consumption was

about 2,11,000 units during the month of September 1982 and 1,50,000 units for the month of October 1982 irrevocably speaks diametrically opposite version of what was stated by the consumer. The rudimentary analysis of the past consumption for about one year preceding the date of inspection ostensibly establishes that the consumption recorded during the period when the consumer claims that the factory was closed and not working is less and lesser and was slightly higher sporadic one or two occasions than that of the consumption recorded during the period of the so called closure of the factory. Therefore, it is clear that the factory was not under shut down during that period but was working at its full capacity. The Inspecting Officer found that the consumer has exceeded the contracted load, which attracts the provisions of Malpractice in use of energy and hence, the consumer has to compensate the loss sustained by the Board. Therefore, in accordance with the procedure contemplated under the Rules in vogue, the Assistant Divisional Engineer issued the initial assessment notice, which was low, and the same was modified in view of the arithmetic error in computation was detected. The B.P./Ms.No.830, dated 25.8.1984 came into force prospectively from 25.8.1994, and cannot be applied retrospectively, and therefore, it has no application to the present case. The Inspecting Officer along with Mr. Naresh Chandra Gupta went around the factory and physically verified each and every electrical equipment and noted all such electrical appliances that are connected to the mains as connected load. The claim of the petitioner that the stand-by motors could not be reckoned as

connected load vitiates the very philosophy of stand-by, which cannot be allowed. It is further stated that all the motors and rectifiers are connected to the mains and are in service. The petitioner's contention that the 2nd rectifier is under erection and the allegation that the inspecting officer has discreetly noted the stray machinery lying all over the factory was not correct. Therefore, it is prayed for dismissal of the Writ Petition.

5. The learned counsel for the petitioner Sri A. Veera Swamy reiterating the contentions stated that the appellate authority did not consider the objections or the contentions raised before it. The appellate authority erroneously rejected all the contentions as was done earlier. It is stated that this Court specifically directed to consider the issue of the claim of the petitioner that the second rectifier unit was only a stand-by unit. The said contention was not at all considered. Therefore, the impugned order is liable to be set aside. The learned counsel also contended that the authorities did not specify whether any loss was caused, and if so, what is the said loss and how it has been computed. In the absence of any specific finding as to the loss caused to the Board, the respondents are not entitled to fix up any liability against the petitioner. The learned counsel also contended that the petitioner was already having a sanctioned load to the extent of 1750 KVA, and therefore, there is no case for any loss that was caused to the Board. The learned counsel also referred to the consumption of power during the months of October, November and December and contended that the consumption of electricity in terms of Units clearly reflects that the

unit was closed for the expansion work; otherwise, the petitioner unit was consuming units more than 2 lakhs. But, during these three months, the power consumed is only from 31,950 units to 74,000 units, which clearly goes to show that the Unit of the petitioner was not functioning. Therefore, the question of causing loss to the Board does not arise. The learned counsel also contended that even assuming that the connected load exceeds the contracted load, even though, it is not the case of the Department that any energy was used or consumed by the petitioner without properly recorded in the metres. Therefore, no loss was caused to the Board, as no power or energy was consumed by the petitioner unaccounted. The learned counsel also relied upon a decision of the Division Bench of this Court in ***Ramraj Kalamandir vs. A.P.S.E.B.***[1], where a Division Bench of this Court considered almost an identical issue and found that no loss was caused to the Board, and therefore, the Board is not entitled to raise any demand. Therefore, the learned counsel sought to set aside the impugned order and consequently order refund of the amount already collected from the petitioner.

6. The learned Counsel for the Respondents, on the other hand, supported the impugned order and contended that as it was found that the petitioner had committed malpractice, it is liable for additional charges as is provided under the terms and conditions of the supply and the Rules. Therefore, the petitioner is liable to pay the demanded amount. The learned counsel relied upon a decision of the Apex Court in ***J.M.D.Alloys Ltd. v. Bihar SEB***[2], where the

Apex Court relying upon its own judgment in ***Hyderabad Vanaspathi Ltd. v. A.P.S.E.B.***[3], wherein it was held that the terms and conditions for the supply of electricity to the consumers notified by the Board in exercise of power under Section 49 of the Electricity (Supply) Act, 1948, and made applicable to all consumers availing supply of electricity, are statutory in character. Therefore, it is contended that when such terms and conditions are applied, there is no infirmity in the assessment made and the bills prepared in pursuance thereof. Therefore, the learned counsel sought to sustain the order of the appellate authority.

7. Heard both the learned counsel and considered the material on record.

8. Admittedly, the petitioner is a consumer of energy supplied by the Respondent-Board, having obtained sanction as well as connection. The Inspecting Officers of the respondent-Board inspected the premises of the petitioner factory on 12.10.1982 and found that the connected load to the unit of the petitioner exceeded the contracted/sanctioned load. Therefore, proceedings were initiated and initial assessment as well as final assessment were made and thus a demand for Rs.2,51,384/- was assessed as liability of the petitioner. The said final demand, which was confirmed by the appellate authority was the subject matter of this Court in a writ petition, where the impugned order was set aside, and the matter was remanded with a direction to the appellate authority to re-consider the claim of the petitioner with reference to the rectifier unit, which is stated to be a stand-by. After the said remand, the

appellate authority, as is represented by the counsel, heard the appeal by successive officers on various dates, and finally an order was passed on 19.07.1994. The claim of the petitioner is that the appellate authority without applying its mind mechanically confirmed the earlier order, which was set aside by this Court in the earlier round, even without considering the issue for which the matter was remanded. In the alternate it is stated that the appellate authority did not give any finding as to the loss sustained by the Board, in view of the fact that the connected load exceeds the contracted load and therefore, in the absence of any specific finding as to the loss caused to the Board, the Board is not entitled to recover any amount from the petitioner.

9. A perusal of the order of the appellate authority shows that the appellate authority only reiterated its finding that the connected load exceeds the contracted load i.e.connected load of 1420.77 H.P. as against the sanctioned load of 1101.91 H.P. Therefore, the malpractice committed by the petitioner is clearly established beyond any doubt. Hence, as per the terms and conditions of the Board, the petitioner is liable to pay the penal charges. From the order of the appellate authority it is clear that the appellate authority has not specifically considered the issue for which the matter was remanded as to the fact that whether the second rectifier unit was only a stand-by unit or not. But, however, by referring to various units with reference to which the connection was provided, was computed and has come up to the conclusion that the connected load exceeds the contracted load. After giving a finding that the petitioner is liable to

pay penal charges, the appellate authority simply estimated the value of malpractice of the consumer at Rs,.2,51,384/-.

10. Now the specific contention of the petitioner is that the Board has not suffered any loss because of the alleged malpractice, and there is no finding as to the loss suffered by the Board, and therefore, the Board is not entitled to make a demand against the petitioner for any amount. In support of this Court contention, the learned counsel for the petitioner relied upon a judgment of this Court i n ***Ramraj Kalamandir vs. A.P.S.E.B.*** (1 supra), wherein the petitioner was having supply of power under L.T. Category-II for running a cinema theatre. The sanctioned load was 8 K.Ws. But, however, the Inspecting authorities have allegedly found that the connected load of the petitioner's service was 18-387 K.Ws., which was in excess of the sanctioned load. Therefore, the petitioner was treated as indulged in malpractice and the loss was estimated at Rs.19,792-75 paise. The appeal of the petitioner failed, and therefore, the petitioner filed the Writ Petition before this Court. The specific contention of the petitioner was that there is no specific and clear finding in the order whether the petitioner committed any malpractice under Condition No.39 of the Conditions of 1975, equally no finding was recorded that the Board suffered loss on account of the alleged malpractice of the petitioner. The Division Bench of this Court, after referring to the terms of supply, specifically Condition No.39.1.2 and other related conditions, have come to the conclusion that in the absence of any specific finding recorded by the Board that it had suffered any loss on account of the alleged malpractice of the

petitioner, the Board is not entitled to raise a demand. The Bench after referring to the Conditions 39.9.2 and 39.9.3 observed as under:

> "From a careful reading of these two Conditions, it follows that the 2nd respondent is required to decide: firstly, whether the petitioner committed a malpractice; and secondly, if he decides that the consumer committed a malpractice he should assess the loss sustained by the Board on account of such malpractice; and thirdly, the loss has to be assessed to the best of his judgment. Now, the assessment of loss presupposes that the Board sustained loss. Therefore, there must also be a finding on the question whether the Board sustained any loss at all on account of the malpractice committed by the consumer. In other words, a finding that no loss is suffered by the Board on account of the malpractice would result in nil or zero assessment of loss. It also follows that his final assessment order should set out his conclusions and reasons for the conclusions i.e., as regards both the findings: (1) finding on the question of committal of malpractice by the consumer; (2) finding on the loss, if any sustained by the Board which includes also the finding on the quantum of the loss. All this has to be done after giving reasonable opportunity to the consumer."

11. If we examine the facts of the present case in the light of the above decision, no doubt in this case also, the appellate authority gave a finding that the petitioner had indulged in malpractice, having connected load of 1420.77 H.P., as against the sanctioned load of 1101.91 H.P. But, however, there is no finding as to the loss that was sustained by the Board. In the absence of any such finding as was contemplated by the decision of a Division Bench of this Court in the above referred decision (1 supra), can the Board is entitled to raise a demand observing that the petitioner is liable for penal charges. Though, in fact, the petitioner disputed as to the findings with reference to the factum of connected load exceeds the

sanctioned load, but, this Court while exercising the review jurisdiction under Art.226 of the Constitution of India, may not be in a position to go into the finding of fact arrived at by the statutory authorities. But, however, unless a specific finding is recorded that the Board had suffered loss on account of the alleged malpractice of exceeding the connected load, as is contemplated under Condition 39.9.2, the Board is not entitled to raise any demand. In fact, the term penal charges are not provided under Condition 39.90, which provides for final assessment. Therefore, the demand as raised by the original authority, which was confirmed by the appellate authority, is clearly not in conformity with the Condition 39.9, which provides for final assessment, basing on the loss sustained by the Board on account of the alleged malpractice. In the absence of any such finding, the demand is clearly illegal and unsustainable.

11. Though the learned Counsel for the Respondents relied upon a decision of the Apex Court (2 supra), wherein it was held that the terms of Conditions for supply of electricity notified by the Electricity Board are statutory in character, with reference to which there is no dispute, and in fact, it is not the contention of the petitioner that the terms and conditions are not binding on the petitioner. But, even as per the terms and conditions, as is referred to earlier unless the Board sustained any loss, it is not entitled to raise any demand.

12. Under the above circumstances, the impugned order is set aside. Consequently, the amount that was recovered under the impugned demand is liable to be refunded to the petitioner. The same can be refunded either by way of adjustment against the

consumption charges or by way of refund in terms of cash. The said exercise is to be completed within a period of four weeks from the date of receipt of this order.

13. The Writ Petition is accordingly allowed. No costs.

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S.Ananda Reddy, J.

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[1] 1997 (2) An.W.R. 703 (DB)

[2] (2003) 5 S.C.C. 226

[3] (1998) 4 S.C.C. 470